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BEFORE THE

Federal Communications Commission

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WASHINGTON, D.C. 20554

NOV - 9 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

) GEN Docket No. 90-314
) ET Docket No. 92-100
)
) RM-7140, RM-7175, RM-7617,
) RM-7618, RM-7760, RM-7782,
) RM-7860, RM-7977, RM-7978,
) RM-7979 & RM-7980

**COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION
AND NEWCHANNELS CORPORATION ON 1850-1990 MHz
PERSONAL COMMUNICATIONS SERVICES**

**ADELPHIA COMMUNICATIONS CORPORATION
NEWCHANNELS CORPORATION**

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SUMMARY

Adelphia Communications Corporation and NewChannels Corporation are both multiple cable system operators who believe that the future of PCS and cable television are linked. To that end, both companies hold experimental licenses and are testing various aspects of PCS. Their comments express views on many of the key issues raised in the Commission's rulemaking notice. Highlights are as follows.

The Commission should license as many PCS providers in a license area as possible, consistent with spectrum limitations. An open marketplace will best serve the public.

Spectrum blocks per licensee may need to be as large as 30 MHz because of incumbent users, particularly in larger markets. Therefore, the maximum total spectrum allocation for PCS should be sought.

The service areas for PCS should be as small as possible. PCS will be expensive to implement and it will be primarily an urban service at the outset. Cellular service areas and cable franchise areas are important precedent here.

The Commission should not classify PCS as just common carrier or just private land mobile service. Rather, given the various nature of the services which PCS can offer, both modes of regulation should be utilized. As in certain other services, the provider would then select the category which applies to the service being offered.

Cellular operators should be excluded from becoming PCS licensees in their service areas. Telephone companies should be eligible where they are not cellular licensees. However, structural and non-structural safeguards are needed and there should be no set-aside or other special favors.

Stiff front-end application requirements and back-end construction and anti-trafficking rules are needed to stem the tide of speculative applications and ensure quality PCS providers from the outset.

The Commission must ensure uniform national non-discriminatory treatment of PCS interconnection with respect to rates, terms and conditions.

The shortest possible transition period for incumbent users and unlimited marketplace negotiation in the meantime are needed to provide adequate usable spectrum space for PCS.

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PERSONAL COMMUNICATIONS SERVICES**

Adelphia Communications Corporation and NewChannels Corporation ("Cable Commenters"), by their attorneys, herein submit their comments in response to the Commission's Notice of Proposed Rule Making on Personal Communications Services ("PCS").

Cable Commenters both have received experimental licenses from the Commission to test their ideas as to how PCS can best be implemented. Adelphia received licenses on February 6, 1992, to conduct tests in Pittsburgh, PA (KF2XFI), Miami, FL (KF2XGK), Tequesta, FL (KF2XJZ) and Buffalo, NY (KG2XAK). NewChannels received a license on March 20, 1992, to experiment in Syracuse, NY (KK2XHD). Both have filed the requisite quarterly reports on their activities.

Cable Commenters have not provided input on every issue raised by the Commission in the rulemaking notice. Rather, only

those issues which Cable Commenters feel strongly about are addressed. It is perhaps stating the obvious to observe that how the Commission decides certain crucial issues will shape the industry irrevocably. Cable Commenters are both major companies in the cable television industry and they strongly believe that PCS and cable television have a linked future, particularly as cable plant is rebuilt using fiber optics and topologies designed to host two-way communications. This belief shapes Cable Commenters' views on the issues in this important rulemaking.

Number of Providers. The Commission's public policy goal is to provide the widest range of PCS services at the lowest possible price to the public. This goal is limited, however, by the amount of spectrum which can be allocated to PCS. Thus, the Commission's compromise proposal is to license three providers in each market area. Comment is also sought on whether a larger number, such as four or five, would be better.¹

Cable Commenters believe that the Commission should license as many PCS providers in a market as possible. Although the necessity to allocate a sufficient amount of spectrum to each licensee is limiting (see infra), there are competitive reasons for having more PCS providers rather than fewer. As the Commission notes, the best way to ensure the widest range of PCS services at the lowest possible price is to throw the market open to as many entities as possible. The marketplace will then decide who survives. But the consumer of PCS services will be

¹ PCS Notice at ¶34.

the ultimate beneficiary of such an approach. Paging, SMR and long distance telephone are but three examples where the net benefit of open competition has been immense. For these reasons, Cable Commenters submit that the number of PCS providers the FCC should consider licensing in each market should be limited only by spectrum considerations.

Size of Spectrum Blocks. The Commission recognizes that each PCS licensee will need enough spectrum to be competitive with other land mobile services and to be able to offer the full range of PCS services. The Commission also recognizes that PCS may have to share spectrum with incumbent users in the 2 GHz band and therefore that adequate spectrum blocks will have to be given to each licensee. Thus, a 30 MHz allocation per licensee is proposed with comment solicited on 20 MHz and 40 MHz alternatives.²

It is Cable Commenters' position that 30 MHz may be needed for each PCS licensee, particularly in a spectrum sharing environment. The Commission is proposing a transition period for relocation of private users in the 2 GHz band and no relocation for public safety users. Thus, there will be a continuing need for shared use and, therefore, more spectrum will be needed by PCS licensees than if the spectrum were "clean." This is especially true in markets where the number of users in the 2 GHz band is large. Although 20 MHz would suffice in markets with low existing 2 GHz use, thus permitting more PCS licensees, the

² PCS Notice at ¶¶35-37.

Commission may find that larger allocations are needed in the major markets. In order to accomplish the aim of licensing as many providers as possible, and to give each licensee ample spectrum, Cable Commenters suggest that the Commission's tentative proposal to allocate 90 MHz to PCS should be enlarged to 120 MHz to accommodate four or even five licensees.

Whatever the size of the block assigned to each PCS licensee, the Commission should not to simply license a particular frequency block to each licensee. The block one licensee received might be relatively "clean" whereas the block another licensee was assigned might be crowded with incumbent users. This type of unintended handicap can be avoided by letting the licensees sort out which spectrum each of them has exclusive rights to in a negotiation process. This suggestion would ensure that each PCS licensee would have equally usable frequency space.

PCS Service Areas. The FCC has tentatively concluded that the licensed service areas for PCS should be larger than those used for cellular, but how much larger is as yet undecided. Four options are put forward for comment: 487 "Basic Trading Areas", 47 "Major Trading Areas", 194 LATAs, and nationwide.³

Cable Commenters believe that even the 487 "Basic Trading Areas" are too sizeable for PCS license areas. The PCS infrastructure will be very expensive to construct, consisting as it will of many low power transmit/receive facilities in

³ PCS Notice at ¶60.

relatively close proximity. The nature of PCS service lends itself better to dense urban settings. At least at the outset, PCS will not be a wide-area service. And, to the extent that a CATV/PCS combination is contemplated as one of the likely scenarios, smaller service areas would seem to be more consistent with the size of cable franchise areas. Finally, there may well be construction deadlines like those in cellular which would be very difficult to meet if the service areas were too large.

Cable Commenters do not want to minimize the Commission's concerns about transaction costs, facilitation of roaming, frequency coordination and other factors which militate in favor of larger service areas. However, the most important consideration is awarding construction permits for areas that are of such a size that the permittee can construct its system and put it into operation in a reasonable time frame. PCS will only develop if realistic goals are set. Cable Commenters suggest that the cellular MSA and RSA designations be used. This would not only be an economically sounder license area size, but also it would put PCS, cellular and ESMR in comparable service areas for competitive purposes. Consolidation and coordination will happen, albeit at the pace of the marketplace.

Channelization Flexibility. The Commission proposes to give licensees the flexibility within their frequency blocks to channelize them as they see fit in order to accommodate the technologies they wish to use and the services they wish to

offer.⁴ Cable Commenters strongly support this proposal. There are many different technologies being experimented with at this time and they require the use of various channelization schemes. Moreover, different services may also dictate more than one channelization scheme. Technical flexibility within a frequency block, subject to interference considerations, should therefore be the watchword.

Limits on Holding Multiple Licenses. The Commission asks whether it should impose some multiple ownership limits. Three possible alternatives are put forward for comment: one license per operator, a cap on the total spectrum one operator can control in a market, or deal with the issue on an ad hoc basis.⁵

Cable Commenters recommend that no specific limits be adopted. There are no such restrictions in cellular, SMR, paging, or any of the other services which are competitive with PCS, so, as a matter of fairness, there should be no such limits on PCS. As in these other services, the marketplace should be left to determine the optimum arrangement. This promises to become a very competitive environment. The Commission should not handicap its development at this early stage by adopting artificial limits which have no empirical basis. If concentration becomes a problem, the Commission can always deal with it on an ad hoc basis or revisit the question at a later date.

⁴ PCS Notice at ¶38.

⁵ PCS Notice at ¶81.

License Term. The Commission proposes to give PCS licensees a ten-year term and a renewal expectancy similar to that adopted for cellular telephone licenses.⁶ Cable Commenters agree that a long license term and a reasonable renewal expectancy are needed in order to attract the huge investment which PCS will require, particularly in view of the fact that PCS is a fledgling business with an unknown economic outlook.

Regulatory Status. As a matter of policy, the Commission seeks to subject PCS to the least possible regulation. It solicits comment on whether PCS should be classified as a common carrier or private land mobile service.⁷ Cable Commenters submit that the Commission should not classify PCS exclusively as a private or common carrier. Instead, the Commission should take a more flexible approach which would allow a licensee to choose which mode of regulation is most appropriate for the services it plans to offer. Since PCS can assume a number of different forms, the Commission should not place it into a particular regulatory pigeonhole.

In drawing the line between common and private carrier regulation, the Commission must keep its policy goals in mind. Certain regulatory developments may result from a decision to classify PCS services one way or the other. Thus, although the Commission might well consider any common carrier PCS service to be "non-dominant" and thus subject to streamlined federal

⁶ PCS Notice at ¶83.

⁷ PCS Notice at ¶¶94-98.

regulation, Section 2(b) of the Communications Act, 47 U.S.C. §152(b), reserves authority to the states to regulate intrastate common carrier communications services. The severing of the interstate and intrastate components of PCS would be extremely difficult. And, as the Commission knows, the courts have recently been restrictive of its authority to preempt state regulation of common carriers.⁸ If, on the other hand, the Commission classifies some or all PCS services as private, the Commission would be on stronger grounds in controlling state regulation. In particular, Section 331(c)(3) of the Act, 47 U.S.C. §332(c)(3), provides that "no state or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service . . ." Thus any PCS service classified as "private and mobile" would be immune from state regulation.⁹

The Commission, in allocating spectrum for new services, has not always attempted to resolve the issue of private versus common carriage on a prospective basis. Rather, similar communications technologies have been permitted to develop on both sides of the regulatory divide. Thus, to meet one-way signalling communications needs there are common carrier paging systems (Part 22 of the Rules) and private carrier paging systems

⁸ Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986); California v. FCC, 798 F.2d 1515 (D.C. Cir. 1986). Cf. Public Utility Commission of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).

⁹ See Telocator Network of America v. FCC, 761 F.2d 763 (D.C. Cir. 1985); American Teltronix, 5 FCC Rcd 1955 (1990).

(Part 90 of the Rules). Two-way mobile radio communications needs may be satisfied by conventional mobile telephone systems (Subpart G of Part 22), cellular systems (Subpart K of Part 22), both licensed as common carriers, or private carrier SMR systems (Subpart S of Part 90). The private/common carrier regulatory dichotomy is not limited to mobile radio systems, but extends to fixed telecommunications as well. Point-to-Point microwave systems and Digital Termination Systems are licensed as either common carriers (Part 21 of the Rules) or private carriers (Part 94 of the Rules).

PCS is no different in these respects from the various other communications services and technologies that have developed over the years. It would be extremely difficult, if not impossible, to determine now whether the service will develop primarily as a common carrier or a private carrier service, or which would better serve the public interest.¹⁰ Market forces will provide better answers to these questions. For these reasons, Cable

¹⁰ In this connection we note the Commission's concern that Section 332(c) of the Communications Act, 47 U.S.C. §332(c), may preclude private land mobile licensees from reselling interconnected telephone service for a profit. The Commission has historically taken the position that a private carrier cannot profit from the resale of interconnected telephone service. See Second Report and Order in Docket No. 20846, 89 FCC 2d 741 (1982). The risk, of course, is that a party profiting from such resale might then be classified as a resale common carrier. Consistent with Cable Commenters' regulatory approach, a party desiring to profit on such resale will presumably be willing to be classified as a common carrier. The more important question involves the terms of interconnection. As set out below, Cable Commenters urge the Commission to ensure fair and equitable interconnection terms and conditions for both private and common carrier PCS operations.

Commenters respectfully urge the Commission to adopt a regulatory structure that allows PCS to grow and develop in both regulatory environments.

While the Commission could take the approach of dividing the available spectrum between the common carrier and private service, as is the case in the services cited above, a better approach would be to jointly allocate all of the available spectrum to both services, with inter-service frequency coordination being required. Applicants would specify whether they were requesting a private or a common carrier authorization, and the license issued would so designate the regulatory class of the system.¹¹ This approach has a number of advantages. It relieves the Commission of having to make a crystal ball determination at this time as to the relative spectrum requirements between common carrier and private licensees. It will also make a subsequent change in a licensee's regulatory status easier from both a practical and a procedural standpoint. In any event, to the extent that newer frequency use techniques (e.g., spread spectrum, fast packet, etc.) are implemented in PCS, traditional concepts of dividing spectrum will become both meaningless and inefficient.

¹¹ This is essentially the approach followed in the licensing of domestic satellite earth stations. All applications are filed with the Common Carrier Bureau and subject to the technical requirements of Part 25 of the Rules, but the applicant specifies in the application whether the earth station will be operated on a common carrier or a private basis. Subsequent changes in regulatory status, from private to common carrier or vice versa, are requested by filing FCC Form 403.

PCS Licensee Eligibility. The Commission proposes to allow cellular operators to become PCS licensees outside their cellular service areas and seeks comment on whether they should be allowed to become PCS licensees inside their cellular service areas.¹² The Commission also proposes to allow local telephone companies to become PCS licensees both inside and outside their telephone service areas or, alternatively, to essentially "set aside" approximately 10 MHz of PCS spectrum for "initial deployment of a PCS system integrated with a wireline local operating company."¹³

Cable Commenters agree with the proposal to exclude cellular operators from becoming PCS licensees inside their service areas since cellular systems can already provide PCS. As the Commission noted, "it is likely that cellular phone companies will provide (microcell) PCS services in the bands now used for cellular services."¹⁴ Cable Commenters also agree with the Commission that local telephone companies should not be specifically barred from becoming PCS licensees within their own telephone service areas simply because they provide telephone service in the PCS market.¹⁵ Cable Commenters do suggest,

¹² PCS Notice at ¶67.

¹³ PCS Notice at ¶¶75-78.

¹⁴ PCS Notice at ¶66.

¹⁵ Cable Commenters note that the exclusion of cellular carriers within their service areas will also bar most local telephone companies from becoming PCS licensees in their own telephone service areas. Local telephone companies should not be exempted from the cellular exclusion since the rationale underlying the exclusion remains unaffected.

however, that the Commission adopt structural and non-structural safeguards, such as a separate subsidiary requirement and joint cost accounting, so that the anticompetitive potential of common ownership of the LEC "bottleneck" and the PCS can be controlled.

Cable Commenters strongly oppose the Commission's alternative proposal of either (a) setting aside 10 MHz of unassigned PCS spectrum for local telephone companies; (b) allowing them to acquire the 10 MHz from the allocated PCS spectrum; (c) or allowing them to lease or purchase the 10 MHz in the PCS aftermarket.¹⁶ In those situations where the local telephone company is excluded from becoming a PCS licensee because of its status as a cellular licensee in the PCS market, none of the variations of the Commission's proposals are viable for the same reasons underlying the exclusion in the first place. As to those situations when the local telephone company is not rendered ineligible to become a PCS licensee, Cable Commenters oppose the first variation whereby the local telephone companies would be effectively granted a "set-aside" of 10 MHz for PCS operations. The prospect of "economies of scope" between the wireless and wireline operations, even if actualized, does not justify guaranteeing local telephone companies a PCS license. The Commission should be careful not to make decisions with long-term implications based on the very imperfect knowledge it has regarding what PCS will be, the role of the local telephone

¹⁶ PCS Notice at ¶¶77-79.

network in PCS operations and how PCS will fit into a competitive mobile communications marketplace.

PCS Licensee Selection and Qualifications. The Commission has suggested using lotteries to select the winner of each PCS license. The Commission is seeking comments on ways to reduce the costs and delays normally associated with lotteries. The initial application could either be a simple "postcard" type or it could require complete submission of construction and business plans, engineering specifications and firm financial commitments. Either way, the Commission would only examine the qualifications of the winner. Other options mentioned are short filing windows, strict entry criteria, narrow eligibility requirements, and high filing fees.¹⁷

The Commission's concern is to hold down the volume of applications, most particularly those filed by speculators. Cable Commenters believe that this concern can be best addressed by tightening the applicant qualifications or "front end" requirements. The Commission's suggestion of a "postcard lottery" wherein "the winning applicant could be given 30 days to demonstrate that it meets all financial, technical and other eligibility requirements"¹⁸ does not assure qualified applicants; only qualified licensees. It is much easier for an applicant to obtain a firm financial commitment when it has already won in a lottery. If it is the Commission's intention to stem the tide of

¹⁷ PCS Notice at ¶¶85-90.

¹⁸ PCS Notice at ¶85.

speculative applications, applicants must be required to demonstrate their qualifications and eligibility at the time they file their applications. Thus, Cable Commenters support the Commission's second option, "to require complete financial and technical showings on every application."¹⁹

Cable Commenters suggest the following "front end" requirements:

(a) The Commission should establish a very high non-refundable application filing fee. The Commission's proposal to pattern PCS application fees after the method used by the Private Radio Bureau for nationwide 220 MHz applications is fundamentally sound.²⁰ However, since such a method is based on a small fee (e.g., \$35) per call sign with a designation of one call sign per channel per market, it is extremely important that the Commission establish minimum initial system proposal requirements. Absent such requirements, applicants would be free to propose skeletal initial PCS systems in order to minimize the application filing fee.

(b) The Commission should also require that applicants include in their applications a legally binding firm financial commitment which can be satisfied either through internal financing (using current **audited** financial statements and a net liquid assets test) or through a firm financial commitment letter from a recognized lender.

¹⁹ PCS Notice at ¶85.

²⁰ PCS Notice at ¶¶89-90.

In order to deal with the problem of equipment vendors handing out thousands of financial commitment letters, such as happened in the cellular RSAs, equipment vendors should not be allowed to require applicants to purchase the vendor's equipment if they win the lottery. It would also be useful to have the Commission place a limit on the number of firm financial commitment letters that a single entity can issue in a single market, particularly if the Commission licenses more than two PCS operators per market. The financial commitment should cover construction and operation of the PCS system for a set period of time, based on benchmarks adopted by the Commission.

(c) The Commission should require that no party to a PCS application have any interest (direct or indirect, equity or voting or future income stream or sales proceeds) in another application for the same market or any of the rights which may flow from it. This requirement would be similar to Section 22.921 of the Commission's Rules as it applies to cellular applications.

(d) The Commission should require that no party to a PCS application alienate in any way (excepting death or other involuntary acts such as bankruptcy) any ownership interest in any pending PCS application or its applicant. This requirement would be similar to Section 22.922 of the Commission's rules except that it would be more flexible with regard to situations where involuntary events result in the alienation.

(e) The Commission should require the submission, as part of each PCS application, of a detailed "real-party-in-interest" certification (this would include disclosure of all pre-licensing agreements affecting all aspects of construction and operation of the proposed system). This requirement would be a more comprehensive version of the certification required of applicants for 900 MHz authorizations in the Designated Filing Areas by the Private Radio Bureau.

By adopting strict "front end" requirements to govern applicant eligibility and qualifications, the Commission would not need to restrict legitimate pre-lottery settlements. Although pre-lottery settlements should not be the product of pre-filing agreements, post-filing settlements can be beneficial. The pooling of resources by compatible applicants can only bode well for PCS development in the license area. While such partial settlements may increase the regulatory burden with respect to the processing and reviewing functions, they can also be expected to speed up the licensing process if the Commission requires the submission of the settlement agreements by a date certain well in advance of the lottery date.

The Commission should require aggressive construction and operational benchmarks such that x% of the population in the market area be capable of receiving PCS from the licensee's system within certain time frames.

Finally, Cable Commenters also believe that a reasonable holding period on lottery winners, covering at least the initial

construction of the system, would further discourage speculators. Waivers would be available for legitimate personal and business reasons, but close scrutiny of such requests should be announced up-front.

PCS Interconnection. The Commission has proposed that PCS licensees would have a federally protected right to interconnection with the LEC. Issues related to the type of interconnection would be preempted, but state and local regulation of interconnection rates would not be preempted. The Commission asks whether the PCS provider should be entitled to obtain a type of interconnection that is reasonable for the particular PCS system and no less favorable than that offered by the LEC to any other customer or carrier; whether more specific requirements may be necessary in certain circumstances; and whether the interconnection rights would differ depending on whether PCS is classified as private or common carriage.²¹

Cable Commenters agree with the Commission that PCS carriers should have "a federally protected right to interconnection with the PSTN" and that PCS should be afforded interconnection "no less favorable than that offered by the LEC to any other customer or carrier."²² However, the Commission should make clear that the "federally protected right" is breached by more than an absolute denial. The experience with interconnection in the cellular context teaches that such a right can be compromised by

²¹ PCS Notice at ¶¶99-103.

²² PCS Notice at ¶¶99, 101.

local telephone company behavior that falls short of a flat denial. Cable Commenters recommend that the Commission take a more active role with respect to interconnection. In particular, the Commission should clearly explain that the PCS operators and the local telephone company are true co-carriers and that the local telephone company must treat the PCS operators as if they also were local telephone companies. This treatment would require that local telephone companies compensate PCS operators for landline telephone traffic carried on the PCS systems just as PCS operators, like cellular operators do now, would compensate the local telephone companies for PCS traffic carried on the local telephone company's landline facilities. Similarly, a "Calling Party Pays" arrangement could be suggested. This arrangement, which has been allowed in a few cellular markets, simply means that the person placing the call would pay for it.

While not preempting the states in this area, the Commission should require adherence to a set of guidelines which would ensure uniform national non-discriminatory treatment of PCS interconnection, particularly with respect to rates, terms and conditions. Cable Commenters also recommend that the Commission require that PCS interconnection rates, terms and conditions not differ between private and common carriage.

Incumbent 2 GHz Users/Negotiation and Involuntary Relocation. The Commission has proposed that incumbent users in the 2 GHz band be protected from involuntary relocation for an as yet undetermined transition period, but that new service

providers be empowered to negotiate earlier relocation. Assuming that these proposals are adopted, the Commission seeks comment on the merits of implementing a negotiated relocation process specifically with regard to PCS services and what restrictions, if any, should be placed on such negotiated arrangements.²³

Cable Commenters favor the shortest possible transition period. Although spectrum sharing does work, and will be necessary to accommodate the public safety users for some time to come, the success of a growing PCS business will require the eventual relocation of many incumbent users. This is especially true in markets where usage in the 2 GHz band is the heaviest. Thus, there should be no restrictions on voluntary negotiations either during or after the transition period. The marketplace should control developments. As for involuntary relocation after the transition period, an approach similar to that advanced by the Utilities Communication Council is needed. Cable Commenters caution, however, that "equal or better reliability" is a term which must be better defined, and the grounds for an existing user to protest should be spelled out. Moreover, contrary to the UTC position, Cable Commenters submit that, once a relocation has been completed, the process cannot be reversed.

Height and Power Limitations for PCS. The Commission is proposing a maximum PCS base station power of 10 watts (EIRP) and a maximum antenna height of 300 feet above average terrain. A maximum mobile unit power of up to 2 watts (EIRP) is proposed.

²³ PCS Notice at ¶¶46-47.

These proposals are based on the experience with PCS experiments. As an alternative, the Commission seeks comment on power and height limits somewhat similar to those in cellular, perhaps even as high as 1000 watts and 1,969 feet for base stations and power for the PCS mobile of up to 200 watts.²⁴ Cable Commenters recommend that the Commission not adopt any height or power limits for PCS base stations other than those which may be necessary to control inter-system interference. In order to allow the PCS industry to establish itself as a competitive force in the mobile communications marketplace, PCS will need to initially compete with the same products as the existing cellular duopoly. Once PCS is known and has established credibility in the marketplace, it will naturally need to develop its own identity and differentiate its services from cellular. As a result, PCS licensees must be given the technical flexibility to commence operations in a macrocell configuration before evolving to the expected microcell PCS layout. Moreover, given the capital-intensive nature of a PCS system infrastructure and the regulatory need to have PCS licensees comply with strict construction and operational benchmarks, this technical flexibility is very important to the viability of PCS.

Conclusion. Cable Commenters believe that the promise of PCS will be greatly affected by the decisions made by the Commission in this rulemaking. Therefore the Commission must carefully consider the issues and not rush to judgment. The

²⁴ PCS Notice at ¶¶114-116.

amount of spectrum to be allocated, the fate of incumbent users, the number of PCS operators to be licensed, the regulatory framework chosen, and many other questions will shape the PCS industry. The watchword should be regulatory and technical flexibility in an open marketplace. Everyone will benefit if that path is chosen.

Respectfully submitted,

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